* **HIGH COURT OF DELHI : NEW DELHI**

\+ **W.P(C) No. 1385 OF 2007**

Judgment reserved on: September 13, 2007

Judgment delivered on: October 12, 2007

Commissioner of Police ..... Petitioner
Through: Ms. Geeta Luthra, Advocates.

versus

Rajender Singh ..... Respondent
Through: Ms. Raman Oberoi, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J.
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1. The respondent Rajender Singh was enrolled as a Sub-Inspector in Delhi Police on 19.11.1981. He was confirmed in the said rank with effect from 1.3.1985 along with his other counterparts. His case was considered for bringing his name on

promotion list `F' (Exe) with effect from 12.8.1994. A Departmental Promotion Committee (DPC) meeting for the said purpose was held in August, 1994 which found him `unfit' for promotion on account of one major penalty of forfeiture of approved service and six minor penalties of `censor'. The respondent challenged the imposition of the said major penalty in OA No.1019/1993 before the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) which was set aside with all consequential benefits, on 11.12.1998. Review DPC was held on 18.11.1999 on account of effacement of the major penalty and for consideration of the case of the respondent. However for bringing his name on promotion list `F' (Exe), on account of the aforesaid six minor penalties of ***censure***, he was again declared 'unfit' for promotion vide order dated 29.11.1999. In the interregnum, the respondent was also implicated under Section 7 of the Prevention of Corruption Act in case FIR No.54/1999, which is pending.

2. The respondent preferred a representation against the declaration of his being 'unfit' for promotion by the Review DPC by placing reliance on a decision of this in Court WP(C) No.1354/2001 dated 15.7.2002 in the case of ***Vishnu Dev Madan Vs. Union of India & Ors***. That representation was

considered after a direction was issued by the Tribunal in OA No.297/2004, by a speaking order the same was rejected by the Special Commissioner of Police on 9/17.5.2005. Thereafter the respondent preferred OA No.1328/2005 under Section 19 of the Administrative Tribunal Act which has been allowed by the Tribunal by the impugned judgment dated 17.6.2006. The Tribunal by the impugned order set aside the order dated 9.5.2005 and directed the petitioner herein to hold the appropriate proceedings to consider promoting the respondent to the rank of Inspector (Exe.) with effect from 12.8.1994, and in the event of his promotion to grant him all the consequential benefits. It is against the aforesaid order dated 17.6.2006 that the present petition has been preferred by the petitioner.

3. The Tribunal relied on ***Vishnu Dev Madan (Supra)*** and concluded that only 5 years record has to be considered by the DPC while considering the case of a candidate for promotion. It held that any minor punishment of ***censure,*** that is inflicted not on corruption or moral turpitude or negligence in protecting government property, but on administrative lapse, cannot be an impediment in the empanelment for promotion of Delhi Police Officer. The Tribunal observed that of the 6 punishments of censure 1 was not beyond the period of 5 years reckoned for

promotion in 1994, while others are on account of absence, negligence and dis-obeying the orders of senior officers. It observed that none of the censure awarded to the Respondent was founded on corruption or moral turpitude or negligence in protecting Government property. It concluded that, therefore, the said punishment of censure were not an impediment to his being promoted and that the DPC had acted illegally while refusing to empanel the Respondent in the promotion list 'F' on the basis of the said six punishments of censure.

4. The contention of the petitioner before us is that the DPC is required to consider the entire service record of the candidate while considering his suitability at the time of considering his case for promotion. Consequently, the various penalties inflicted upon a candidate during his entire service tenure have to be considered by the DPC to arrive at its conclusion as to whether a candidate is 'fit' or 'unfit' for promotion. The suitability of the candidate for promotion is to be adjudged on the basis of his entire service record and is not confined merely to the last five years service record on the date of consideration of his case by the DPC.

5. On the other hand, learned counsel for the respondent supported the impugned judgment by placing reliance upon the decision of this Court in ***Vishnu Dev Madan*** (supra). She

contends that the penalty of ***Censure*** is a minor penalty, which impacts the date on which the promotion takes effect only for a limited period of six months from the date of imposition of the penalty, and since it does not debar the consideration of the employee for promotion by the DPC, even during the currency of the said penalty, it certainly cannot be a ground to deny promotion to the employee.

6. At the relevant time, i.e. in the year 1994, when the case of the respondent became ripe for consideration for promotion, circular order dated 3922-325/CB-I dated 23.9.1992 was in vogue. The said circular laid down the principle to be observed while holding a departmental promotion committee meeting for admission of names to the promotion lists. This circular being relevant, is reproduced herein below:

> The following principal should be observed while holding departmental promotion committee for admission of names to the promotion lists :-
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> i) Officers having at least 3 'Good' or 'above' reports and without any below average or adverse report during the last 5 years may be considered.
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> ii) The total record of the officer in that particular rank shall be taken into view with particular reference to the gravity and continuity of punishments till date. Punishments on counts of corruption and

moral turpitude are to be viewed seriously.

iii) Officers who have been awarded any major/minor punishment in the proceeding 5 years on charge of corruption, moral turpitude and gross dereliction of duty to protect government property, or major punishment within 2 years on charge of administrative lapses, from the date of consideration may not be empanelled.

iv) Officers whose names stand on Secret List shall not be considered fit as per S.O. No. 265/89.

v) Officers who have been awarded censures during the last 6 months with no other punishment may also be allowed to be brought on promotion list provided they do not have any other major punishment. However, the effect of **Censure** by debarring the official for promotion by six months shall continue.

vi) Result of Officers, who are under suspension or facing D.E. or involved in criminal cases, shall be kept in sealed covers.

vii) In cases where vigilance enquiries are pending against an officer and the allegations are specific and serious in nature, results may be with-held the finalisation of the enquiry.

7. From a reading of the aforesaid circular it is also clear that officers who have been awarded ***censures*** are not barred from being brought on the promotion list, provided they do not have

any other major punishment. The effect of the penalty of ***Censure*** on the promotion of the concerned officer is that the orders of promotion would not be given effect to, even if he is found suitable for promotion by the DPC for a period of six months from the date of imposition of the said penalty. Consequently while ***Censure*** by itself would not have the effect of preventing the officer from being considered for promotion, it would impact the date from which he would be granted promotion, inasmuch as, the promotion would not take effect for a period of six months from the date of imposition of the said penalty.

8. Clause (ii) of the aforesaid circular states that the total record of the officer in that particular rank shall be taken into account with particular reference to the gravity and continuity of punishments till date. Punishments on account of corruption and moral turpitude are to be viewed seriously.

9. The DPC would, therefore, not only assess the comparative merit of the candidates, on the basis of the ACRs of the last five years, it would also assess the suitability of the candidates for promotion on the basis of their total record. The DPC has been provided sufficient guideline for assessing the aspect of suitability, inasmuch as, it is provided that '***gravity and continuity of punishments till date***' are to be seen and

'***punishments on counts of corruption and moral turpitude are to be viewed seriously***'.

10. The '*total record*' of an officer would include all commendations and penalties in the service record of the officer. It would also include the major and minor penalties. Merely because the minor penalties may have a direct impact only for a limited period, such as ***Censure*** or reduction in pay for a limited period, which does not have an effect of postponing future increments, it does not mean that such penalties would cease to be a part of the '*total record of the officer*'. This aspect has not been appreciated by the Tribunal. Therefore, mere meritorious record, as reflected in the ACRs is not sufficient, and the candidate also has to be one, who is not unsuitable for promotion to the higher rank.

11. While allowing the OA filed by the respondent the Tribunal has heavily relied upon a decision of this Court in the case of **Vishnu Dev Madan** (supra). Relevant extract from the decision in **Vishnu Dev Madan (supra)** reads as follows:

> "It is not in dispute that in terms of the aforesaid Circular letter dated 23rd September, 1992 the principles which were required to be observed by the DPC for admission of the promotion lists had been laid down which, inter alia, are as under:-

"(ii) Officers who have been awarded any major/minor punishment in the preceding 5 years on charge of corruption, moral turpitude and gross dereliction of duty to protect government property, or major punishment within 2 years on charge of administrative lapses, from the date of consideration may not be empanelled."

There cannot be any doubt whatsoever that the respondents are bound by the aforementioned Circular letter. In that view of the matter, the minor punishments of **Censure** awarded against the petitioner, in our opinion, could not be taken into consideration. In terms of aforementioned clause(iii) the DPC was required to confine its consideration for denying promotion to the petitioner only in the event he had undergone a major/minor punishment in the preceding 5 years on charge of corruption, moral turpitude and gross dereliction of duty to protect government property, or major punishment within 2 years on charge of administrative lapses from the date of consideration. Such is not the case here. As indicated hereinbefore, despite the fact that the DPC was required to consider the ACRs of the petitioner only for the last five years i.e since 1989-1994, the learned Tribunal had taken into consideration the ACRs of the petitioner since 1983. In that view of the matter, the order impugned before the Tribunal as also the impugned order of the Tribunal cannot be sustained. We are fortified in our view by a recent Division Bench decision of this court dated 18th

December, 2001 in CWP No.2189/98 wherein it has categorically been held that so far as punishment of **Censure** is concerned, the same is wiped off within six months. The Division Bench in no uncertain terms observed:

"We have examined the impugned order from all angles and found it wholly innocuous in terms. It is a matter of record that respondent had secured "good" remarks in 1989-90, "outstanding" in 1991-92 and "very good" in 1992-93 and had satisfied the terms of petitioners circular dated 23.9.92 qualifying for promotion but for the four censures awarded to him from 1988094. It is also not in dispute that clause (v) of this permitted officers awarded **Censure** during the last six months to be brought on the promotion list, although actual promotion was to be deferred for six months. That being so, if petitioners adjudged respondent unfit for promotion on the basis of his overall service record they should have held so by assigning a reason or two and if the impugned Tribunal order wanted them to do so, it could not be faulted.

L/c for petitioner Ms. Geeta Luthra's sole grievance was that Tribunal had declared a **Censure** to be invalid after expiry of six months by interpreting clause (v) of petitioner's circular dated 23.9.92. the issue seems academic to us in the light of the impugned Tribunal direction. Nor does the Tribunal pronounce so conclusively to invalidate petitioners action."

We are, therefore, of the opinion that the impugned order cannot be sustained which

> is set aside accordingly and the matter is remitted to the Departmental promotion Committee to consider the matter relating to grant of promotion to the petitioner afresh with effect from the due date upon taking into consideration the aforesaid Circular order as expeditiously as possible and not later than two months from the date of communication of this order. The writ petition is allowed. in the event the petitioner is found fit for promotion, we have no doubt in our mind that all consequential benefits shall be granted to him."

12. From the above extract from ***Vishnu Dev Madan*** (supra) , it appears that the facts of that case were materially different. It appears that rather than confining its consideration to ACRs of last five years, that is, from 1989 to 1994, the DPC took into consideration the ACRs of the petitioner in that case since 1983.

13. The details of the six punishments of censures awarded to the respondent are as follow:

1. **Censure** on 14.3.86 for misbehaving with the VIP with whom the S.I. Was detailed as P.S.O.

2. **Censure** on 3.1.90, he managed medical rest deliberately to avoid his training course at N.S.G. Centre, Manesar (Haryana)

3. **Censure** on 2.12.92 for manipulating the challan to court in case FIR No.223/92 u/s 307/34 PA Pahar Ganj in order to help the accused.

4. **Censure** on 5.5.93 for his misconduct that being the I.O. Of case FIR No.394/92 u/s 376 IPC PS Pahar Ganj, he failed to file a challan in

the court within the stipulated period which resulted in grant of bail to the accused.

5. **Censure** on 20.5.93 for his misconduct that in case FIR No.223/91 u/s 307/34 PS Pahar Ganj, he filed the challan in the court without the knowledge of SHO and discussing the same with Assured Career Promotion.

6. **Censure** on 8.11.93 for giving false report to the senior officers in connection with the illegal detention on nine family members."

14. In the present case the petitioner has stated that the Review DPC found that the punishments awarded were of a serious nature. The ***Censure*** dated 5.5.1993 was awarded on account of misconduct of the respondent that led to the release of an accused in a rape case on bail. The traumatic effect of the misconduct of the defaulter on the victim of crime could, in no circumstance, be taken lightly. The punishment of ***Censure*** inflicted on 20.5.1993 was on account of the respondent leaving lacunae in the investigation of a particular case. Despite the ACP, Pahar Ganj directing the respondent to discuss the case with him, the respondent did not do the needful and took the challan to the public prosecutor directly even though the case was one of attempt to murder. In respect of the punishment of ***Censure*** inflicted on 8.11.1993 the respondent was found to have furnished wrong information to senior officers about a case pending in the High Court. While he mentioned that the writ

petition filed by the complainant had been dismissed by this Court, later on it was confirmed that the petition was still pending in the Court.

15. In the light of the aforesaid facts, we do not agree that it could be said that the aforesaid punishments did not carry any element of moral turpitude or that they were inflicted merely on account of a minor or casual lapse in the performance of his duties by the respondent. Moreover, 5 out of 6 penalties of **Censure** have been inflicted within the period of five years of the date on which the promotion of the respondent was to be considered in the year 1994.

16. For the aforesaid reasons in our view the decision in ***Vishnu Dev Madan*** does not apply to the facts of the present case. Our attention has also been drawn by the petitioner to two other decisions of the Tribunal in the case of ***SI Sajjan Kumar V. Union of India,*** OA No.7/1996 dated 28.6.1996 and ***Harish Shankar Yati v. Commissioner of Police, Delhi*** OA No.1912/1996 dated 18.7.1996 wherein the Tribunal had taken the view on the basis of paragraph 2 of the circular order dated 23.9.1992 that ***Censure*** awarded to an officer remains a part of his service record which has to be taken into account in the over all assessment by the DPC and therefore, the same could not

overlooked by the DPC. Both these decisions were assailed by the respective petitioners therein before the Supreme Court and were affirmed by the Supreme Court as the Special Leave Petitions were dismissed.

17. In view of the aforesaid position, we are of the view that the judgment of the Tribunal is lacunaic and cannot be sustained. Accordingly we set aside the impugned judgment of the Tribunal and dismiss the OA filed by the respondent.

18. Parties are left to bear their respective costs.

VIPIN SANGHI, J.

A.K.SIKRI, J.

October 12, 2007
P.K. BABBAR